

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33960

THE CENTRAL ILLINOIS RAILROAD COMPANY—LEASE AND OPERATION
EXEMPTION—LINES OF THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY AT CHICAGO, COOK COUNTY, IL

Decided: November 30, 2000

On November 22, 2000, the Board, by order of the Chairman,¹ denied a petition to stay the effectiveness of a notice of exemption filed in this docket by the Central Illinois Railroad Company (CIRR). The notice invoked a class exemption at 49 CFR 1150.31 to lease from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate approximately 5.9 miles of main line track and approximately 12.47 miles of sidetrack, collectively referred to as the Lumber District and Illinois Northern lines or portions thereof, in the vicinity of BNSF's Western Avenue Yard in Chicago, Cook County, IL. The stay request was filed by Joseph C. Szabo on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL).

On November 29, 2000, UTU-IL filed what it styled a petition for reconsideration of the stay denial. CIRR replied later that day.

The petition will be denied. UTU-IL rehashes its previous claims that we lack jurisdiction and that the notice is defective. The prior decision adequately disposed of those arguments and we need not address them again here. UTU-IL also argues that the Board erred in finding that the affected members of UTU-IL were not likely to suffer irreparable harm. However, BNSF had stated that the crew working on the line to be leased would not be reassigned. The decision characterized petitioner's argument that other, unidentified employees would suffer some unidentified harm as speculative and not the sort of harm that is immediate or irreparable.

Petitioner takes issue with this characterization and with the statement that, if members of UTU-IL suffered actual losses, petitioner could collect damages. UTU-IL states that damages may be obtained only for a showing of a violation of the underlying statute, and not merely on the basis of revocation of an exemption. But the arguments that petitioner makes in support of

¹ As respondent Central Illinois Railroad Company correctly notes, our regulations require the Board's Chairman to notify the other Board members both of the filing of a stay and of its proposed disposition. 49 CFR 1011.5(d). Pursuant to the regulations, the proposed decision addressing the stay request was circulated to the Board members for objections. There were no objections.

its contention that it is likely to prevail on the merits — that CIRR is a bogus carrier, that the lease is a sham intended to influence labor negotiations, and that the result of the transaction is to foster unsound and inefficient operations which will redound to the injury of the public — are the sort of arguments that, if proved, could provide the basis for an order by us requiring the railroad to do whatever is necessary to return the situation to the status quo before the class exemption notice was filed. This remedial power is inherent in our notice of exemption process, which permits carriers to take actions before we hear petitions for revocation by opposing parties, subject to the risk that the exemption may be revoked and that they will need to undo their actions and make employees whole for any consequent harm, where appropriate. We note, however, that petitioner has not documented that real harm will occur to any employee. Moreover, petitioner has not convinced us that it will be able to prevail on the merits of any of the allegations it makes. The petition will be denied.

It is ordered:

1. The petition for reconsideration is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary